

Cooper



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Syllor, Inc./Ease

File: B-234870

Date: June 9, 1989

DIGEST

Contracting agency's rejection of bid as nonresponsive because of uncertainty as to the identity of the actual bidder is proper where bid was submitted by an entity that certified itself as both a joint venture and a corporation, characterized its corporate status as "other corporate entity", and used the employer's identification number of one member of the purported joint venture, a corporation.

DECISION

Syllor, Inc./Ease, a purported joint venture of Syllor, Inc., and Ease Chemical, protests the rejection of its bid and the award of a contract to any other bidder under invitation for bids (IFB) No. DLA400-88-B-0100A, issued by the Defense Logistics Agency (DLA).

We deny the protest.

DLA issued the IFB on November 25, 1988, for hydraulic fluid and lubricating oil. The solicitation provided for multiple awards for 29 line items. It also provided for application of a 10 percent evaluation preference for small, disadvantaged business concerns (SDBs). Seven bidders responded by the January 31, 1989, closing date. The protester was the low bidder for one line item after application of the SDB evaluation preference.

The contracting officer made an initial determination of nonresponsibility based on a negative pre-award survey conducted on both Syllor, Inc./Ease under a prior solicitation. Since the protester had certified that it was a small business, the agency referred the matter to the Small Business Administration (SBA) for review under its certificate of competency procedures. According to the agency, as a result of inquiries from the SBA about the nature of the relationship between the two firms, it reviewed the protester's bid again. The contracting officer then

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determined that the bid was ambiguous concerning the bidder's legal status and identity and rejected the bid as nonresponsive.

Syllor, Inc./Ease maintains that it is a valid joint venture. The protester argues that the agency relied on the wrong information in making its determination of nonresponsiveness and complains that the agency did not question it on this matter or give it an opportunity to respond.

The record shows that Syllor, Inc./Ease completed the "Type of Business Organization" clause in its bid by marking both the corporation and joint venture boxes. In addition, the protester completed amendment No. 1 with an address that differed from that given for the bidder in the bid itself, and characterized its corporate status as "other corporate entity." The agency also states that the employer's identification number (EIN) provided in the bid is that of Syllor, Inc.

To be responsive, a bid must constitute an unequivocal offer to provide without exception exactly what is required at a firm-fixed price. Sess Construction, Inc., 64 Comp. Gen. 355 (1985), 85-1 CPD ¶ 319. The determination as to whether a bid is responsive must be based solely on the bid documents themselves as they appear at the time of bid opening. Haz-Tad, Inc., et al., B-232025, Nov. 17, 1988, 68 Comp. Gen. ___, 88-2 CPD ¶ 486. Further, an award to an entity other than that named in the bid constitutes an improper substitution of bidders. Id.

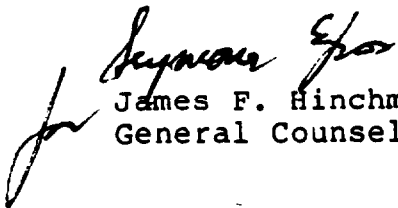
We believe the agency rejection of the bid as ambiguous was proper based on the protester's unexplained marking on the bid form that it was both a corporation and a joint venture, its use of different addresses on the bid and on amendment No. 1, its characterization of its status as "other corporate entity," and its insertion of the EIN of Syllor, Inc. First, the bidder's identity cannot be both a corporation and a joint venture, an ambiguity which was compounded by the differing addresses and the protester's own characterization of its status. Second, the certification of the bidder as a joint venture is inconsistent with the use of one company's EIN. Thus, since Syllor, the corporation, and Syllor, Inc./Ease, the purported joint venture, are separate legal entities, we believe this contradictory information in the bid made the protester's bid ambiguous. See Future Electric Co., B-212938, Feb. 22, 1984, 84-1 CPD ¶ 216.

Because the bidding entity's identity is unclear, acceptance of the bid would not result in a binding commitment by a

specific, clearly identified bidder, and the bid is therefore nonresponsive. Griffin Construction Co., 55 Comp. Gen. 1254 (1976), 76-2 CPD ¶ 26. Although the protester complains that the agency did not allow it to correct the ambiguity, since responsiveness is determined from the face of the bid at bid opening, post-bid opening explanations are unacceptable and cannot be used to cure a nonresponsive bid. Schlumberger Industries, B-232608, Dec. 27, 1988, 88-2 CPD ¶ 626.

Syllor, Inc./Ease further asserts that DLA is not complying with the spirit and intent of the SDB programs in rejecting its bid as nonresponsive. The record demonstrates, however, that DLA included the SDB 10 percent evaluation preference in the solicitation 1/, and, by virtue of its application, Syllor, Inc./Ease displaced another firm to become the low bidder. Accordingly, since Syllor, Inc./Ease was properly rejected as nonresponsive for a reason unrelated to its SDB status and would have received award as the low bidder only as a result of the application of the SDB evaluation preference if its bid had not been rejected, we find no support for Syllor, Inc./Ease's allegation.

The protest is denied.


James F. Hinchman
General Counsel

1/ This SDB preference was incorporated into the solicitation pursuant to an interim rule, effective March 21, 1988, issued by the Department of Defense (DOD) to implement section 1207 of the National Defense Authorization Act for fiscal year 1987, Pub. L. No. 99-661, 100 Stat. 3973, and section 806 of Pub. L. No. 100-180 (the DOD Authorization Act for fiscal years 1988 and 1989). See 53 Fed. Reg. 5114, 5126 (1988) (to be codified at 48 C.F.R. § 219.7000).